

**FINAL REPORT
OF THE
INTERIM STUDY COMMITTEE ON
JUVENILE LAW AND
RESTORATIVE JUSTICE**



**Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789**

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I. LEGISLATIVE COUNCIL DIRECTIVE

The Legislative Council directed the Committee to do the following:

- A. Study issues of concern relating to the juvenile laws and make recommendations for the revision and improvement of those laws (SEA 203-99); and
- B. Study whether the implementation of restorative justice principles would be appropriate for this state. (SEA 203-99)

II. SUMMARY OF WORK PROGRAM

The Committee met on August 9, 1999, September 13, 1999, and October 13, 1999. All meetings were held in Room 404 of the State House at 10:00 a.m.

III. SUMMARY OF TESTIMONY

The Committee heard the following testimony:

August 9, 1999

Senator Marvin Riegsecker gave a brief history of the evolution of the restorative justice concept in the Indiana General Assembly, and conveyed his belief that restorative justice is most effectively applied to cases involving juveniles.

Al Wengerd, Executive Director, Center for Community Justice, discussed restorative justice based on 22 years of experience with criminal justice and community-based systems. He specifically provided information about Elkhart's experience with restorative justice, and indicated that if a framework is provided in which restorative justice can work, the community will participate because the concept makes sense to businesses and other community organizations.

Mr. Wengerd stressed that the system is largely victim-driven, the referring court reviews any proposed settlement and must approve it before it can be pursued further. He explained that the Center monitors the settlement and collects any restitution paid by the offender. In settlements where the offender is required to pay monetary restitution, the Center "bills" the offender by sending out an invoice to be paid, a practice which has increased the Center's collection rate by three-fold.

Mr. Wengerd advocated that Indiana establish the Youthful Offender Act, which sets the upper age limit for juveniles at 24 years of age, because research shows that sentencing first time offenders to serious jail time results in higher recidivism rates.

The Honorable Julie Cartmel, Juvenile Magistrate, Marion County, testified that restorative justice is beginning to generate interest across the country. She explained that the purpose of restorative justice is to get the victim back into the criminal justice process and to force juveniles to face their victims and the consequences of their crime.

She discussed models of restorative justice used in New Zealand and Australia, and stressed that the flexibility of the models is an advantage. Magistrate Cartmel noted that the main difference from the American conceptualization of restorative justice is that in New Zealand and Australia, all criminal cases are referred to the restorative justice system (with the victim's permission), including offenders who have committed serious crimes, and it is used with adult offenders as well.

Magistrate Cartmel also discussed the application of restorative justice to child abuse and neglect cases in New Zealand and Australia, and indicated that the success rate is very high and the system is cost effective because it lowers the number of institutional placements in the long run.

Don Evans, President, Community Corrections Advisory Board, Porter County, discussed key features of restorative justice that are already reflected in Indiana's existing criminal justice system.

September 13, 1999

James Hmurovich, Director of the Division of Family and Children (DFC), Indiana Family and Social Services Administration, testified about the role of restorative justice in child abuse and neglect cases based on his experience as DFC Director for 6.5 years, and his prior 20 years of experience with the Department of Correction. He stressed the link between maltreatment of children and subsequent delinquent behavior, and the importance of Early Intervention Planning Teams and the need for schools to develop plans to handle delinquency and child abuse and neglect.

Bill Glick, Executive Director of the Indiana Juvenile Justice Task Force, Inc. testified that the biggest piece missing from the juvenile offender puzzle is aftercare, the process by which juvenile offenders are transitioned back into the community.

Dan Shrader, a public defender in Marion County, explained the penalties for burglary and resisting law enforcement and clarified that status offenders can only be incarcerated for running away or for truancy, and then only when those offenses are committed while the juvenile is on probation. He stated that status offenders are not supposed to be detained in juvenile detention centers, except for runaways, which may be so detained for a maximum of 24 hours.

Jeff Bercovitz, Probation/Juvenile Director, Indiana Judicial Center, commented regarding the merits of separating Title 31 into two titles (one for juvenile law, and one for family law). He advised that because the Supreme Court is in the middle of a Family Court Pilot Project, separating Title 31 into two titles would be premature.

October 13, 1999

The Honorable James Payne, Marion Superior Court, testified about trends in juvenile justice and the need for flexibility and alternatives to the traditional adversarial court system for first time juvenile offenders. He observed that: (1) juvenile offenders are offending at much younger

ages; (2) although overall juvenile crime is down, juvenile violent crime is up; (3) the number of female juvenile offenders is on the rise; (4) drug use is tied to violence; (5) the number of middle-class kids arrested is increasing; and (6) younger kids are getting arrested a number of times.

He stated that Indiana juvenile courts do a good job dealing with juvenile offenders on the front end of the system, and praised laws which give courts flexibility by age and disposition. Judge Payne noted that the juvenile system is not addressing the needs of some juvenile offenders and neither is adult court. For this group of juveniles, a lack of long-term sanction exists and therefore there is little opportunity to change behavior. He stated that juvenile offenders placed in the adult system actually receive less time and punishment than in the juvenile system. Judge Payne stressed that Indiana needs a system that can address serious and repeat offenders, and advocated for a three-tier model which would serve juveniles, adults, and youthful offenders. He also expressed concern about the trend toward lowering the age that a juvenile can be waived to adult court

Judge Payne testified that he would like to see a facility developed where alternative dispute resolution, restorative justice and mediation services are provided to first time juvenile offenders. He added that ideally, counselors would be available to provide early assessment and evaluation services, and sufficient technology would be available to allow information sharing between law enforcement, the schools, welfare department, and mental health organizations. Judge Payne closed his comments by stating that the only thing that positively influences violence is education because as education increases, violence decreases.

The Honorable Charles Pratt, Allen Superior Court, testified that he favors a three-tiered system to counter the trend toward exclusion of juvenile jurisdiction and the automatic referral of juveniles to adult court. He observed that while the goal of the statute requiring some juveniles to be automatically referred to adult court was to ensure tougher penalties, the result has been that those juveniles serve less time than if they had remained under the jurisdiction of the juvenile court. Judge Pratt commented that the laundry list of offenses that require automatic referral to adult court is not logical, as some of the offenses are misdemeanors, and others are serious felonies.

He stated that IC 31-37-19-10¹, which outlines how a juvenile is committed to Boy's School for example, is a convoluted statute and requested that the Committee consider clarifying it. Judge Pratt also stressed the need for legislation that would allow a juvenile court to require forfeiture of a juvenile's driver's license when the juvenile commits an alcohol-related offense.

Judge Pratt referenced the issue of parental responsibility for intentional torts committed by children. He stated that there needs to be clarification as to whether the court ordered restitution amount or the statutory limit controls. He also stated that mental health providers are requiring courts to go through a Title 16 hearing in a CHINS ("children in need of services") case, and would like clarification on their statutory ability to require this procedure.

¹Confinement of a delinquent child at least 14 years of age committing act that would be felony against person, Class A or Class B controlled substances felony, or burglary and two prior unrelated adjudications that would be felonies if committed by an adult.

Judge Pratt stated that an aspect of Indiana's juvenile law that works is the ability of the juvenile court to recapture jurisdiction of a juvenile offender after the offender serves his sentence with the Department of Correction. He also observed that Indiana is a leader because juvenile judges are collaborating effectively with IARCCA (Indiana Association of Residential Child Care Agencies) to develop effective outcome measurements, which are extremely important in the arena of juvenile justice.

Scott Newman, Marion County Prosecutor, stated that there are many things about the Indiana juvenile justice system which work well because most juveniles don't reappear before the court after their first offense. He testified that Marion County has implemented a restorative justice project in which first time offenders go through a family conferencing process. This process encourages both the offender and the victim to bring a group of supporters into the conference, which is then managed by a trained facilitator.

Mr. Newman reported that as a result of the project, victim satisfaction has increased, as has project compliance by the offenders. In addition, he has seen a decrease in recidivism which he attributes to the fact that the process increases the "moral freight" of an offender's first brush with the juvenile justice system. He praised the flexibility of the Indiana juvenile code, and stressed that while there is a need for balancing the system, punishment (incarceration), intermediate intervention (probation, day reporting) and prevention must all be present for an effective system.

Mr. Newman testified that as an urban prosecutor, a tremendous problem is how to deal with young killers. He stated that there are no good choices for treatment for this particularly troublesome group of juvenile offenders, because often the Department of Correction doesn't want them, and the juvenile system doesn't offer a serious enough sentence. For this reason, he advocates the three-tier system, comprised of adults, juveniles, and youthful offenders for ages 15 to 21 or 22. He explained that the youthful offender group are those juveniles who aren't ready for adult prison, but who have committed offenses too serious to be handled by a juvenile facility. He stated that this group may need additional procedural rights and protections.

Mr. Newman commented that the juvenile justice system is backlogged because of the lack of Department of Correction facilities and resources. In discussing the waiver of juveniles to adult court, he explained that such juveniles have an average of nine prior charges before being committed to the Department of Correction, and only 3.9% never went through a diversionary program. Mr. Newman expressed his support for better aftercare for kids committed to the Department of Correction because aftercare is an important component which is often overlooked. He stated that boot camps are effective only when they're long enough and provide substantial aftercare services.

Dr. Wanda Wallace Reisz, Director of Alternative Education for the Indianapolis Public Schools, discussed the link between family and domestic violence and subsequent violent behavior of juvenile offenders. She commented that there are many contradictions in the juvenile code which affect children negatively. She noted that middle school children are being charged with weapons violations, and that because most youth crime occurs between 4 and 8 p.m., it doesn't make sense to require school children to only attend school until 2:30 p.m.. Dr. Wallace Reisz testified that in response to these realities, she has developed a number of programs, including 48 Safe Haven schools, a bilingual kindergarten program that provides

care to children from 7:30 a.m. to 6 p.m., 30 alternative schools, a fourth grade Peace Learning Center, and a Peace Camp in Bradford Woods. She reported that IPS has received a \$3 million school-to-work grant, but that the Safe Haven schools recently experienced a \$500,000 cut in funding. Dr. Wallace Reisz indicated that problems exist with funding alternative schools due to state educational standards based on average daily membership (ADM), which is a count taken in September each year for funding formula purposes. She stated that the ADM measurement is problematic for alternative schools because children may not be in school for the count.

Dr. Wallace Reisz stated that more flexibility and collaboration is needed between the juvenile justice system and schools. She argued that restorative justice shouldn't be mandated, but options for alternatives to the traditional methods of dealing with juvenile offenders should be offered.

Roger Duvall, Scott County Prosecutor, testified that as the Prosecutor for a small community, he is personally familiar with the juvenile offenders and their families. He explained that while he has a special interest in assuring the safety of the community, he also seeks to balance the treatment of juvenile offenders. Mr. Duvall commended the General Assembly for enacting juvenile laws that afford flexibility to prosecutors and judges in the disposition of offenders. He stressed the need for the system's intense involvement with the juvenile offender's family, so that when the juvenile returns to the community he doesn't step back into the same family problems.

Bill Glick, Executive Director of the Indiana Juvenile Justice Task Force, Inc., testified that the current system is extremely fragmented. He stated that there is a need for blended sentencing and for the establishment of juvenile drug courts, in addition to the need to ensure that all juveniles are assessed for drug treatment if necessary.

Mr. Glick expressed concern with the growing number of private detention centers springing up throughout the state. He stated his fear that some centers are built even when there aren't enough juvenile offenders to fill them. Mr. Glick advocated that counties be required to submit a certification of need before a center can be built in order to quell the philosophy of "if you build it, they will come". He advocated more coordination, and noted the existence of three interim study committees with overlapping study areas (the Juvenile Law and Restorative Justice Committee, the Education Committee, and the Criminal Justice Issues Committee).

IV. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee identified the following issues to be examined in the 2000 interim session. No votes were taken during the 1999 interim session.

1. Consistency of the juvenile code

Currently, West Group's Annotated Indiana Code family law and juvenile law are published in separate volumes, each with its own index (however, both are in Title 31).

Those who favor splitting the two areas into two separate titles stress the substantive difference

in family law and juvenile law - juvenile law is separate and distinct from family law and the cases are heard in different courts.

Those who argue against such a split stress that: (1) the traditional approach has been to group them together under the same title; (2) while juvenile law is distinct from family law, some overlap between the areas exists; (3) there is concern about the proliferation of titles in the Indiana Code.

2. The impact of restorative justice on juvenile offenders.

The fact that there is a serious lack of research regarding recidivism rates of juvenile offenders who are treated in restorative justice-type programming is a problem which needs to be addressed.

3. Should a three-tier system be established? Or should juvenile offenders be separated based not on age, but on status vs. non-status offenses?

Some argue that since there are two kinds of juvenile offenders, status and non-status, they should be kept separate from each other. Others contend that the General Assembly artificially established age eighteen as the cutoff between juvenile and adult offenders, and that perhaps a three-tier system should be developed. The following threshold ages for each tier were offered as an example: first tier: up to 16 years of age; second tier from 16 to 24 years of age; and third tier for those offenders over 24 years of age.

The cost of establishing such a system must be considered prior to proposing such a change in philosophy and structure of the current juvenile justice system.

4. The effectiveness of the current criminal justice system in its treatment and rehabilitation of juvenile offenders should be examined

The perception that the number of juvenile offenders (including female offenders) seem to be increasing, and their crimes becoming more serious, resulted in speculation that part of the ineffectiveness of the current system is the lack of personal involvement by law enforcement with offenders. In the past, common practice was for police officers to become directly involved with juveniles and their parents when a juvenile was caught offending. Today police are required to refer a juvenile to probation or juvenile court and often discouraged from getting personally involved with the juvenile and their families.

5. The effectiveness of juvenile boot camps should be determined.

The effectiveness of juvenile boot camps in lowering recidivism was questioned by several members, particularly in recognition of the high cost of such boot camps. Testimony was presented that research consistently indicates that such boot camps are highly ineffective. To date, the Department of Correction has not conducted a study of recidivism rates for offenders who were sentenced to the boot camp in LaPorte County.

6. The Committee should hear from states who have successfully reorganized their juvenile codes and implemented restorative justice concepts.

The Committee discussed the need to learn what other states have done to successfully reorganize their juvenile codes in order to avoid reinventing the wheel. It was reported that states such as Illinois and Ohio have recently improved their juvenile justice systems.

7. How effective are current aftercare programs?

The Committee heard testimony that there are not enough programs that successfully transition juvenile offenders back into the community. The existence of effective aftercare programs are widely varied across the state, and depend on each county's caseloads and resources.

Some members contended that communities provide the most effective aftercare, and that there need to be alternatives to boot camps and incarceration that would still provide a structured transition that would get juvenile offenders positively involved in their communities.

8. The flexibility of Indiana's juvenile system.

The Committee recognizes that the current juvenile justice system is effective in many ways, including the secrecy of juvenile offender records, the lack of an adversarial process, the flexibility that the Indiana Code provides to judges and prosecutors to use their discretion in sentencing based on age and disposition. This flexibility has allowed several counties to implement effective restorative justice projects without the necessity of special legislation. However, the Committee may consider proposing legislation that encourages such creativity by providing a laundry list of options and alternatives that counties and courts can use when developing such projects.

9. When should additional juvenile facilities be built? Should certification of need be required?

In order to counter the tendency to build more juvenile facilities than necessary at great cost to the counties, the Committee will explore the idea of requiring counties to certify their need for such a facility before approval will be granted.

The Committee made no recommendations.

WITNESS LIST

Jeff Bercovitz, Probation/Juvenile Director, Indiana Judicial Center

The Honorable Julie Cartmel, Juvenile Magistrate, Marion County

Roger Duvall, Scott County Prosecutor

Don Evans, President, Community Corrections Advisory Board, Porter County

Bill Glick, Executive Director of the Indiana Juvenile Justice Task Force, Inc.

James Hmurovich, Director of the Division of Family and Children, Indiana Family and Social Services Administration

Scott Newman, Marion County Prosecutor

The Honorable James Payne, Marion Superior Court

The Honorable Charles Pratt, Allen Superior Court

Senator Marvin Riegsecker

Dan Shrader, Marion County Public Defender's Office

Dr. Wanda Wallace Reisz, Director of Alternative Education for the Indianapolis Public Schools

Al Wengerd, Executive Director, Center for Community Justice